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12 BAXA CORPORATION

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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

KATHLEEN SHINN and RICHARD SHINN,
Individually, as Heirs and as Personal Co-
Administrators of the Estate of ALYSSA SHINN,
Deceased,

Plaintiff,

vs.

BAXA CORPORATION; MCKESSON
CORPORATION, a Delaware Corporation; DOES 1
through 50, and ROE CORPORATIONS 1 through 20;

Defendants.

Case No.: 2:07-CV-01648-JCM-PAL

AGREED PROTECTIVE ORDER FOR
THE PROTECTION OF
CONFIDENTIAL INFORMATION

BAXA CORPORATION,

Cross-Claimant,

vs.

SUMMERLIN HOSPITAL MEDICAL CENTER, LLC;
SUMMERLIN HOSPITAL MEDICAL CENTER, LP;
UHS HOLDING COMPANY, INC.; and DOES I-X and
ROE CORPORATIONS I-X,

Cross-Defendants.

1 SUMMERLIN HOSPITAL MEDICAL CENTER, LLC,
2 Counterclaimant,
3
4 vs.
5 BAXA CORPORATION,
6 Counter-Defendant.

7 **AGREED PROTECTIVE ORDER FOR THE
8 PROTECTION OF CONFIDENTIAL INFORMATION**

9 WHEREAS, the parties hereto have stipulated to the signing and entry of this Confidentiality
10 Agreement for the Discovery of Confidential Information ("Confidentiality Agreement" or
11 "Agreement"), and for good cause shown, IT IS HEREBY AGREED that each of the parties and their
12 respective counsel shall be governed by the following terms and conditions concerning Confidential
13 Information in the above-captioned action:

14 **NOW, THEREFORE, IT IS HEREBY ORDERED THAT:**

15 1. This Order applies to all documents and other products of discovery, and all information
16 derived therefrom, obtained by Cross-Claimant/Counter-Defendant, Baxa Corporation ("Baxa") or
17 Cross-Defendant/Counter-Claimant Summerlin Hospital Medical Center, LLC ("Summerlin LLC"),
18 Cross-Defendant Summerlin Hospital Medical Center, LP ("Summerlin LLP"), or Cross-Defendant UHS
19 Holding Company, Inc. ("UHS," and together with Summerlin LLC and Summerlin LLP, the
20 "Summerlin Parties") (collectively, the "Parties"), pursuant to the requirements of any court order, or
21 pursuant to requests under the applicable state or federal Rules of Civil Procedure, including but not
22 limited to, Disclosure Statements, Supplemental Disclosure Statements, Answers to Requests for
23 Admissions, Answers to Interrogatories and Requests for Production of Documents, documents
24 subpoenaed and transcripts of depositions (hereafter "Discovery Material").

25 2. The parties have agreed that Discovery Material will be used only for the litigation of
26 actions in the above-captioned litigation ("Litigation"), including any appeals of this Litigation and for no
27 other purpose without prior written approval from the Court or the prior written consent of the producing
28 person. Confidential Discovery Material will not be disclosed except in accordance with paragraph 3

1 below.

2 3. Persons producing Discovery Material may designate as Confidential Discovery Material
3 information containing trade secrets or other confidential research, development, or commercial
4 information; personnel files or any documents containing personnel information of any former or current
5 employees; any documents containing information about former or current patients; documents or
6 information containing proprietary matters including, without limitation, operations manuals, training
7 manuals, company employee handbooks, job descriptions, and/or other company policies or policies
8 related to the issues in this Litigation; or documents relating to investigations conducted in connection
9 with the matters at issue in the Litigation ("Confidential Discovery Material") to the extent that such
10 designation falls within the scope of discovery pursuant to the applicable Rules of Civil Procedure.

11 4. Copies, extracts, summaries, notes, and other derivatives of Confidential Discovery
12 Material shall also be deemed Confidential Discovery Material and shall be subject to this Order.

13 5. Confidential Discovery Material shall not be disclosed to anyone other than the following
14 categories of persons:

15 a. The Court (including courts of review) and any person normally incident to
16 disclosure to the court;

17 b. Court reporters, videographers, and their staffs engaged for depositions in this
18 action;

19 c. Counsel for a party in this action, and secretaries, paralegals, law clerks, and other
20 staff employed by the offices of such counsel who are assisting in connection within this
21 Litigation;

22 d. Court reporters (including persons operating video recording equipment at
23 depositions) and persons preparing transcripts of testimony to the extent necessary to
24 prepare such transcripts;

25 e. Retained experts, advisors and consultants (including persons directly employed
26 by such experts, advisors and consultants), but only to the extent necessary to perform
27 their work in connection with this Litigation, provided that the proposed expert, advisor
28 or consultant: (1) is given a copy of this Order; and (2) signs an undertaking in the form

1 of Exhibit A hereto;

2 (i). If the Summerlin Parties or their counsel wish to disclose information
3 designated by Baxa as Confidential Discovery Material to an expert, advisor, or
4 consultant who they are aware is currently an employee, officer, director,
5 contractor, subcontractor or consultant of any entity that is presently engaged in
6 the research, development, manufacture or sale of any medical device product that
7 competes with Baxa Corporation's MicroMacro™ 23 Compounder or its Abacus
8 Software, the Summerlin Parties or their counsel shall promptly so notify Baxa's
9 counsel, including with such notification a copy of the expert's curriculum vitae
10 prior to disclosing any Confidential Discovery Material to that expert, advisor or
11 consultant.

12 Within five (5) business days of receiving such notification and curriculum
13 vitae, Baxa's counsel shall notify the Summerlin Parties' counsel of any
14 objections to the disclosure of Confidential Discovery Material to the proposed
15 expert.

16 If an objection is made and not resolved by the parties, the party objecting to
17 disclosure shall file a motion (or letter to the Court) in support of that objection
18 within seven (7) business days of the objection. Under no circumstances shall
19 Confidential Discovery Material be disclosed to an expert, advisor, or consultant
20 who the Summerlin Parties or their counsel is aware is currently an employee,
21 officer, director, contractor, subcontractor or consultant of any entity that is
22 presently engaged in the research, development, manufacture or sale of any
23 medical device product that competes with Baxa Corporation's MicroMacro™ 23
24 Compounder or its Abacus Software unless and until the parties resolve the
25 matter, the objection is withdrawn, or the Court permits disclosure;

26 (ii). If Baxa or its counsel wishes to disclose information designated by the
27 Summerlin Parties as Confidential Discovery Material to an expert, advisor or
28 consultant who they are aware is an employee, officer, director, contractor,

1 subcontractor or consultant of any entity that is presently engaged in the operation
2 or management of an acute care hospital, behavioral health facilities, or
3 ambulatory care center that competes with any healthcare facility that is a
4 subsidiary or affiliate of UHS, Baxa or its counsel shall promptly so notify the
5 Summerlin Party's counsel, including with such notification a copy of the expert's
6 curriculum vitae prior to disclosing any Confidential Discovery Material to that
7 expert, advisor or consultant.

8 Within five (5) business days of receiving such notification and curriculum
9 vitae, the Summerlin Party's counsel shall notify Baxa's counsel of any objection
10 to the disclosure of Confidential Discovery Material to the proposed expert.

11 If an objection is made and not resolved by the parties, the party making
12 the objection shall file a motion (or letter to the Court) in support of that objection
13 within seven (7) business days of the objection. Under no circumstances shall
14 Confidential Discovery Material be disclosed to an expert, advisor, or consultant
15 who is currently an employee, officer, director, contractor, subcontractor or
16 consultant of any entity that is presently engaged in the operation or management
17 of an acute care hospital, behavioral health facilities, or ambulatory care center
18 that competes with any healthcare facility that is a subsidiary or affiliate of UHS,
19 unless and until the parties resolve the matter, the objection is withdrawn, or the
20 Court permits disclosure;

21 g. The author or recipient of the Confidential Discovery Material;

22 h. Any party and non-party deponents or trial witnesses, if: (1) the attorney making
23 the disclosure advises the witness that this Order bars the deponent from divulging
24 Confidential Information and gives the witness a copy of this order; (2) the witness has
25 agreed to abide by the terms of this Order as set forth in paragraph 2 and the disclosure is
26 made in good faith; and (3) the Confidential Information is not left in the possession of
27 the deponent, unless the deponent signs the undertaking in the form of Exhibit A hereto;

28 i. Any mediator before whom the parties mediate the claims asserted in the above-

1 captioned action; and

2 j. Such persons as the undersigned counsel shall consent to in writing before the
3 proposed disclosure, so long as those persons: (1) are given a copy of this Order; and (2)
4 sign an undertaking in the form of Exhibit A hereto.

5 6. Where counsel is required to obtain a signature on Exhibit A before disclosing
6 Confidential Discovery Material to a person, that counsel shall retain the signed copy while this
7 Litigation is pending. Executed undertakings in the form of Exhibit A shall be furnished to counsel for
8 the parties to this action upon request.

9 7. a. Documents claimed by the producing party to contain Confidential Discovery
10 Material shall, prior to production, be marked as "Confidential." Placement of the
11 "Confidential" designation on each protected page when it is produced shall constitute
12 notice to all other persons that the document contains Confidential Discovery Material (as
13 defined herein).

14 b. In the case of deposition testimony, confidentiality designations shall be made
15 within thirty (30) days after the transcript has been received by counsel making the
16 designation, and shall specify the testimony being designated confidential by page and
17 line number(s). Until the expiration of such 30-day period, the entire text of the
18 deposition including all testimony therein and exhibits thereto (except for exhibits that
19 were previously produced without being marked confidential), shall be treated as
20 confidential under this Protective Order. After the expiration of the 30-day period, only
21 the specific page(s) and line number(s) and exhibits, designated as being confidential, if
22 any, shall be treated as confidential.

23 c. In the event that the producing person inadvertently fails to designate Discovery
24 Material as confidential in this litigation, it may make such a designation subsequently by
25 notifying all parties to whom such Discovery Material was produced, in writing, as soon
26 as practicable. After receipt of such notification, the parties to whom production has been
27 made shall treat the designated Discovery Material as Confidential Discovery material.

28 8. All individuals or entities receiving Confidential Discovery Material shall take all steps

1 reasonably necessary to prevent the disclosure of Confidential Discovery Material other than in
2 accordance with the terms of this Order.

3 9. Disclosure of Confidential Discovery Material other than in accordance with the terms of
4 this Protective Order may subject the disclosing person to such sanctions and remedies as the Court may
5 deem appropriate.

6 10. a. If at any time a party wishes for any reason to dispute a designation of Discovery
7 Material as confidential hereunder, such party shall notify the designating party of such dispute in
8 writing, specifying the Discovery Material in dispute and the nature of the dispute. If the parties are
9 unable amicably to resolve the dispute, the disputing party may apply by motion to the Court for a ruling
10 as to whether the designating Discovery Material may properly be treated as confidential.

11 b. All Discovery Material designated as confidential under this Order, whether or not
12 such designation is in dispute pursuant to subparagraph 10(a) above, shall retain that designation
13 and be treated as confidential in accordance with the terms hereof unless and until:

14 (i). The producing party agree in writing that the material is no longer
15 confidential and subject to the terms of this Order; or

16 (ii). This Court enters an Order that the matter shall not be entitled to
17 confidential status and that Order is not subject to an appellate stay within twenty
18 (20) days after it is issued.

19 11. The parties shall negotiate in good faith before filing any motion relating to this Order.

20 12. Any non-party may subscribe to the terms and protections of this Protective Order by
21 designating Discovery Materials that the non-party is producing (whether written documents, deposition
22 testimony, or other) as Confidential Discovery Materials, as set forth in paragraph 7.

23 13. Any Confidential Discovery Material that is to be filed with the Court shall be submitted
24 pursuant to applicable rules.

25 14. No disclosure pursuant to this paragraph shall waive any rights or privileges of any party
26 granted by this Order.

27 15. This Protective Order shall not enlarge or affect the proper scope of discovery in this or
28 any other litigation and shall not imply that Discovery Material designated as confidential under the

1 terms of this Protective Order is properly discoverable, relevant or admissible in this or any other
2 litigation.

3 16. The entry of this Protective Order shall be without prejudice to the rights of the parties, or
4 anyone of them, or of any non-party to assert or apply for additional or different protection at their
5 discretion.

6 17. All counsel of record in this litigation shall make a good, faith effort to comply with the
7 provisions of this Protective Order and to ensure that their clients do so. In the event of a change in
8 counsel, retiring counsel shall advise new counsel of the existence of a Protective Order and provide new
9 counsel with a copy of the Protective Order.

10 18. The terms of this Order shall survive and remain in effect after the termination of this
11 Litigation. The parties shall take such measures as are necessary and appropriate to prevent the public
12 disclosure of Confidential Discovery Material, through inadvertence or otherwise, after the conclusion of
13 this Litigation.

14 19. Within thirty (30) days of the termination of this Litigation as to the producing party,
15 including all appeals, the parties shall return to counsel for the producing party the Confidential
16 Discovery Material produced by the other party and all copies thereof, or the parties may agree upon
17 appropriate methods of destruction. Confidential Discovery Material that is maintained by counsel as an
18 exhibit to a document that had been filed with the Court is not subject to this paragraph.

19 20. If Confidential Material in the possession of a receiving party is subpoenaed by any court,
20 administrative or legislative body, or any other person or organization purporting to have authority to
21 subpoena such data or information, the party to whom the subpoena is directed shall not, to the extent
22 permitted by applicable law, provide or otherwise disclose such documents or information without
23 waiting ten (10) business days after first notifying counsel for the producing party in writing of: (1) the
24 information and documentation which is requested for production in the subpoena; (2) the date on which
25 compliance with the subpoena is requested; (3) the location at which compliance with the subpoena is
26 requested; (4) the identity of the party serving the subpoena; and (5) the case name, jurisdiction and
27 index, docket, complaint, charge, civil action or other identification number or other designation
28 identifying the litigation, administrative proceeding or other proceeding in which the subpoena has been

1 issued.

2 21. Inadvertent production of documents subject to work-product immunity, the attorney-
3 client privilege or other legal privilege protecting information from discovery shall not constitute a
4 waiver of the immunity or privilege provided that the producing party shall promptly notify the receiving
5 party in writing of such inadvertent production. However, no use of such documents by the recipient(s)
6 of those documents prior to such notification shall be deemed a violation of this Order. If reasonably
7 prompt notification is made, such inadvertently produced documents and all copies thereof, as well as all
8 notes or other work product reflecting the contents of such materials shall be returned to the producing
9 party or destroyed, upon request, and such returned or destroyed material shall be deleted from any
10 litigation-support or other database. No use shall be made of such documents during deposition or at
11 trial, nor shall they be shown to anyone who was not given access to them prior to the request to return or
12 destroy them, unless otherwise permitted by the Court. The party returning such material may move the
13 Court for an order compelling production of the material.

14 22. This Order does not restrict or limit the use of Confidential Discovery Material at any
15 hearing or trial and does not prevent any party from seeking an appropriate protective order to govern
16 such use of Confidential Discovery Material at a hearing or trial.

17 23. The parties and any other person or entity subject to the terms of this Order agree that the
18 United States District Court, Southern District of Nevada, shall have jurisdiction over it and them for the
19 purposes of enforcing this Agreement, notwithstanding any subsequent disposition of this Litigation.
20 The parties and any other person or entity subject to the terms of this Agreement further agree that

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1 Nevada law shall govern any action to enforce or relating to this Agreement.

2 24. This Confidentiality Agreement may be signed in counterparts.

3 **IT IS SO STIPULATED.**

4 **MORRIS POLICH & PURDY LLP**

5
6 DATED this 30 day of July, 2010.

7 BY: _____

8 NICHOLAS M. WIECZOREK

9 Nevada Bar No. 6170

10 TRACY A. GALLEGOS

11 Nevada Bar No. 9023

12 3883 Howard Hughes Parkway, Suite 560

13 Las Vegas, Nevada 89169

14 Attorney for Defendant Baxa Corporation

15 **HALL PRANGLE & SCHOONVELD, LLC**

16 DATED this 28th day of July, 2010.

17 BY:  105591

18 KENNETH M. WEBSTER

19 Nevada Bar No.: 7205

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21 Las Vegas, NV 89107

22 (702) 889-6400 – Office

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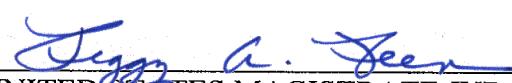
24 kwebster@hpslaw.com

25 Attorneys for Cross-Claimant/Counter-Defendants

26 **ORDER**

27 **IT IS SO ORDERED.**

28 DATED this 30 day of July, 2010.


UNITED STATES MAGISTRATE JUDGE

1 EXHIBIT A

2 **ENDORSEMENT OF AGREED PROTECTIVE ORDER**

3 I hereby attest to my understanding that information or documents designated confidential are
4 provided to me subject to the Agreed Protective Order for the Protection of Confidential Information
5 dated _____, _____ (the "Protective Order"), in the above-captioned
6 litigation entitled *Kathleen Shinn, et al. v. Baxa Corporation, et al.*, United States District Court Case
7 No. 2:07-CV-01648-JCM-PAL; that I have been given a copy of and have read the Agreed Protective
8 Order, and that I agree to be bound by its terms. I also understand that my execution of this Agreed
9 Protective Order, indicating my agreement to be bound by the Agreed Protective Order is a prerequisite
10 to my review of any information or documents designated as confidential pursuant to the Agreed
11 Protective Order.

12 I further agree that I shall not disclose to others, except in accord with the Agreed Protective
13 Order, any Confidential Discovery Material, in any form whatsoever, and that such Confidential
14 Discovery Material and the information contained therein may be used only for the purposes authorized by
15 the Agreed Protective Order.

16 I further agree and attest to my understanding that my obligation to honor the confidentiality of
17 such Discovery Material and information will continue even after this litigation concludes.

18 I further agree and attest to my understanding that, if I fail to abide by the terms of the Protective
19 Order, I may be subject to sanctions, including contempt of court, for such failure. I agree to be subject
20 to the jurisdiction of the United States District Court, Southern District of Nevada, for the purposes of
21 any proceedings relating to enforcement of the Protective Order.

22 I further agree to be bound by and to comply with the terms of the Agreed Protective Order as
23 soon as I sign this Agreement, whether or not the Agreed Protective Order has yet been entered as an
24 Order of the Court.

25
26 Dated: _____

27
28 Signed: _____